

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

FLORENTINO RIVERA, et al.,

Plaintiffs,

V.

CENTRO MÉDICO DEL TURABO, INC.  
d/b/a HIMA SAN PABLO CAGUAS,  
et al.,

Civil No. 07-1137 (JAF)

Defendants.

## OPINION AND ORDER

Plaintiffs Florentino Rivera ("Rivera"), his wife, Carmen de León Rivera ("de León"), and their conjugal partnership bring the present diversity action against Defendants Centro Médico del Turabo, Inc. d/b/a HIMA San Pablo Caguas ("HIMA"), Dr. Marcial Walker ("Dr. Walker"), Dr. Lydia Díaz Borrás ("Dr. Díaz"), and others, alleging medical malpractice and emotional distress arising therefrom in violation of, inter alia, 31 L.P.R.A. §§ 5141, 5142 (2007). Docket Document No. 1. Defendant HIMA moves to dismiss the claims without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6), asserting that we should enforce the forum-selection clause, which requires Plaintiff Rivera to file his claims in Commonwealth court.<sup>1</sup> Docket Document No. 17 (citing FED. R. Civ.

<sup>1</sup> In this circuit, Rule 12(b)(6) is the proper vehicle by which to raise a forum-selection clause defense. Silva v. Encyclopedia Britannica, Inc., 239 F.3d 385, 387 n.3 (1st Cir. 2001).

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1 P. 12(b)(6) (2007)). For the reasons stated below, we grant HIMA's  
2 motion.

3 **I.**

4 **Factual and Procedural Synopsis**

5 We derive the following factual summary from Plaintiffs'  
6 Complaint. Docket Document No. 1. As we must, we assume all of  
7 their allegations are true and we make all reasonable inferences in  
8 their favor. Alternative Energy, Inc. v. St. Paul Fire and Marine  
9 Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001). In addition, we  
10 consider two documents submitted by HIMA that contain the forum-  
11 selection clause at issue in this case. Id. at 33 (stating that a  
12 court may consider documents outside of the complaint if their  
13 authenticity is not disputed by the parties).

14 On November 9, 2005, Dr. Walker performed a prostate biopsy on  
15 Rivera, a 65-year-old man with a history of asthma, hypertension,  
16 and elevated cholesterol. Because the results of the biopsy  
17 revealed that Rivera had prostate cancer, Dr. Walker recommended  
18 that Rivera have his prostate surgically removed. Dr. Diaz provided  
19 Rivera with medical clearance for the surgery, declaring him to be  
20 sufficiently clinically stable to undergo the procedure. The  
21 surgery took place on February 21, 2007, at HIMA, a hospital located  
22 in Caguas, Puerto Rico.

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1           Before Rivera was admitted for surgery, he signed two medical  
2 consent forms authorizing HIMA's doctors to perform the surgery and  
3 administer anesthesia to him during the procedure. Docket Document  
4 No. 17. Each of the consent forms contained a forum-selection  
5 clause stating: "In the event that by act or omission I consider  
6 that physical, emotional or economic damages have been caused to me,  
7 I expressly agree to submit to the Jurisdiction of the Court of  
8 First Instance of the Commonwealth of Puerto Rico, for any possible  
9 claim." Id. The clause appeared in bold font and had a space below  
10 it for the patient's initials. Id. Rivera signed both consent  
11 forms and initialed the forum-selection clause contained in each  
12 form. Id.

13           Rivera lost a significant amount of blood during the surgery,  
14 requiring him to receive blood transfusions. He also suffered from  
15 numerous complications after the surgery.

16           Plaintiffs filed their complaint on February 16, 2007. Docket  
17 Document No. 1. Among the claims in the complaint are Rivera's  
18 malpractice claim and de León's related emotional distress claim  
19 against HIMA, alleging that HIMA was negligent in hiring the doctors  
20 that treated Rivera, and in failing to maintain adequate quality  
21 control measures. Id. HIMA moved to dismiss Plaintiffs' complaint  
22 on April 26, 2007, asserting that we should enforce the forum-  
23 selection clause, which requires Plaintiff Rivera to file his claims  
24 in Commonwealth court. Docket Document No. 17. Plaintiffs opposed

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1 on May 18, 2007. Docket Document No. 25. HIMA filed its reply on  
2 June 14, 2007, Docket Document No. 33, and HIMA sur-replied on  
3 June 26, 2007. Docket Document No. 38.

4 There are also several other motions pending before the court  
5 that were filed by Plaintiffs, including a motion to set aside the  
6 scheduling order, Docket Document No. 29; a motion for leave to file  
7 their First Amended Complaint, Docket Document No. 31; a motion for  
8 an extension of time to further amend the complaint, Docket Document  
9 No. 32; and a motion for leave to file a Second Amended Complaint,  
10 Docket Document No. 39.

11 **II.**

12 **Motion To Dismiss Standard under Rule 12(b) (6)**

13 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a  
14 defendant may move to dismiss an action against him based solely on  
15 the pleadings for the plaintiff's "failure to state a claim upon  
16 which relief can be granted." FED. R. Civ. P. 12(b)(6). In  
17 assessing a motion to dismiss, "we accept as true the factual  
18 averments of the complaint and draw all reasonable inferences  
19 therefrom in the plaintiffs' favor." Educadores Puertorriqueños en  
20 Acción v. Hernández, 367 F.3d 61, 62 (1st Cir. 2004). We then  
21 determine whether the plaintiff has stated a claim under which  
22 relief can be granted.

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We note that a plaintiff must only satisfy the simple pleading requirements of Federal Rule of Civil Procedure 8(a) in order to survive a motion to dismiss. Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002); Morales-Villalobos v. Garcia-Llorens, 316 F.3d 51, 52-53 (1st Cir. 2003); DM Research, Inc. v. Coll. of Am. Pathologists, 170 F.3d 53, 55-56 (1st Cir. 1999). A plaintiff need only set forth "a short and plain statement of the claim showing that the pleader is entitled to relief," FED. R. CIV. P. 8(a)(2), and need only give the respondent fair notice of the nature of the claim and petitioner's basis for it. Swierkiewicz, 534 U.S. at 512-515. "Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" Id. at 514 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

### III.

#### Analysis

HIMA moves to dismiss Plaintiffs' claims without prejudice, asserting that they are bound by a forum-selection clause contained in two documents signed by Rivera. Docket Document No. 17. The clause states that all claims arising out Rivera's treatment at HIMA must be litigated in the Commonwealth Court of First Instance. Id.

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1           We apply federal common law to determine whether the forum-  
2 selection clause in this case is enforceable. Silva v. Encyclopedia  
3 Britannica, Inc., 239 F.3d 385, 386 n.1 (1st Cir. 2001) (applying  
4 federal common law after noting that "there is no conflict between  
5 federal common law and Puerto Rico law regarding the enforceability  
6 of forum-selection clauses"). Under federal law, a forum-selection  
7 clause containing mandatory language is presumptively valid.  
8 Intercall Telecomm., Inc. v. Instant Impact, Inc., 376 F. Supp. 2d  
9 155, 158 (D.P.R. 2005). A mandatory clause "requires that the  
10 litigation be brought only in the chosen forum, to the exclusion of  
11 others." Id. On the other hand, a permissive clause "allows the  
12 parties to litigate in the chosen forum, but does not purport to  
13 exclude them from litigating in some other forum that otherwise had  
14 jurisdiction." Id. Here, the clause is mandatory; it states that  
15 the patient "expressly agrees" that "any possible claim" for  
16 damages, whether caused by act or omission, will be litigated in the  
17 Commonwealth Court of First Instance. See M/S Bremen v. Zapata Off-  
18 Shore Co., 407 U.S. 1, 20 (1972) (finding that a clause stating that  
19 "any dispute arising must be treated before the London Court of  
20 Justice" was mandatory).

21           A mandatory clause will be enforced unless: (1) "it was not  
22 freely negotiated or was the result of overweening bargaining power  
23 or fraud"; (2) "it contravenes a strong public policy of the forum  
24 where the suit is brought"; or (3) "the party challenging its

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enforceability shows that trial in [the] contractual forum will be so gravely difficult and inconvenient that it will, for all practical purposes, be deprived of its day in court." Gonzalez v. Avatar Realty, Inc., 177 F. Supp. 2d 101, 103-04 (D.P.R. 2001) (internal quotations omitted). The party objecting to the validity of the clause bears the burden of proving that it should not be enforced. M/S Bremen, 407 U.S. at 10.

Plaintiffs' primary argument is that the forum-selection clause was obtained by overreaching. Docket Document No. 25. Rivera contends that HIMA's employees did not discuss the clause with him and no one told him that he could consult an attorney before signing the medical forms. Id. In addition, he had just been diagnosed with cancer and was told that he had to undergo a life-saving surgical procedure. Id. Due to these circumstances, Rivera alleges that he was unable to fully consider or appreciate the ramifications of the forum-selection clause when he signed the medical forms. Id.

Although Rivera was presumably upset or stressed when he signed the medical forms, these arguments are insufficient to prove overreaching. The forum clause at issue is what is known as a "boilerplate" provision, which is standardized language that a proposing party inserts into a variety of documents and generally views as relatively nonnegotiable. See BLACK'S LEGAL DICTIONARY 167 (7th ed. 1999). HIMA was not required to discuss the forum-

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1 selection clause with Rivera because boilerplate provisions do not  
2 have to be bargained for or discussed to be valid and enforceable.

3 See Lambert v. Kysar, 983 F.2d 1110, 1119-20 (1st Cir. 1993) ("It  
4 is not the law that one must bargain for each and every written term  
5 of a contract; simply because the [forum-selection clause] was part  
6 of what is called the 'boilerplate' section of the contract does not  
7 in itself make it unfair."); see also Silva, 239 F.3d at 389  
8 (affirming the enforceability of a forum-selection clause that was  
9 a boilerplate provision written in small print on the reverse side  
10 of the contract).

11 A forum-selection clause contained in a form contract will be  
12 upheld, as long as there was sufficient notice of the clause in the  
13 contract and it was not fundamentally unfair. See Carnival Cruise  
14 Lines, Inc. v. Shute, 499 U.S. 585, 595 (1991). Rivera was given  
15 sufficient notice of the terms of the forum provision. It was  
16 written in clear, unambiguous language, and in bold font. See  
17 Docket Document No. 17. Rivera signed both consent forms and  
18 initialed the forum-selection clause contained in each form. Id.  
19 Moreover, we find that the clause was fair because Rivera could have  
20 sought treatment elsewhere, but chose to have his surgery at HIMA,  
21 and it was foreseeable that all claims filed against HIMA would be  
22 litigated in Puerto Rico, where the hospital is located. See Shute,  
23 499 U.S. at 595 (finding that the forum-selection clause was fair

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1 because, inter alia, plaintiffs could have rejected the contract and  
2 the forum selected was the location of defendant's principal place  
3 of business).

4 Plaintiffs' final argument, asserting that the clause violates  
5 their constitutional right to litigate their claims in a federal  
6 court before a jury, is similarly unavailing. Docket Document  
7 No. 25. The Seventh Amendment, which grants litigants the right to  
8 a jury trial in civil cases, is limited in scope in that it only  
9 applies to federal cases. See U.S. CONST. amend. VII. See  
10 Minneapolis & S.L.R. Co. v. Bombolis, 241 U.S. 211, 217 (1916); cf.  
11 Hegmann v. Fermanian, No. 99-336, 200 U.S. Dist. LEXIS 8562, at \*11  
12 (D. Me. June 16, 2000) (finding that Maine law denying plaintiffs  
13 opportunity to resolve small claims by jury trial was not  
14 unconstitutional because the Seventh Amendment does not apply to  
15 states). Not surprisingly, courts have enforced forum-selection  
16 clauses requiring plaintiffs to file their claims in state court  
17 without discussing whether jury trials are available in such fora.  
18 See, e.g., Red Mountain Retail Group, Inc. v. BCB, L.L.C., No. 05-  
19 2557, 2006 U.S. Dist. LEXIS 24923, at \*5-6 (D. Kan. Apr. 27,  
20 2006) (enforcing forum-selection clause requiring resolution of  
21 claims in state court without discussing the availability of jury  
22 trials in that forum); Key Motorsports, Inc v. Speedvision Network,  
23 L.L.C., 40 F. Supp. 2d 344, 345, 349 (M.D.N.C. 1999) (same). Courts

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1 have also often enforced forum-selection clauses that require  
2 parties to submit their claims to foreign courts, where jury trials  
3 are rarely available. See, e.g., Fireman's Fund Ins. Co. v. Cho  
4 Yang Shipping Co., 131 F.3d 1336, 1340 (9th Cir. 1997) (finding  
5 foreign forum-selection clause limiting resolution of claims to  
6 Korean courts to be enforceable); see also Holland Am. Line, Inc.  
7 v. Wartsila N. Am., Inc., 485 F.3d 450, 457 n.4 (9th Cir.  
8 2007) (noting that plaintiffs' argument that enforcement of the  
9 foreign forum-selection clause would violate their Seventh Amendment  
10 fails because it "would render contrary to public policy almost any  
11 forum-selection clause providing for resolution in a foreign  
12 country, as very few countries provide for jury trials in civil  
13 cases"). As such, we find that the forum-selection clause at issue  
14 does not violate Plaintiffs' Seventh Amendment rights and,  
15 therefore, conclude that the clause is enforceable.

16 The only remaining question is whether the forum-selection  
17 clause applies to Plaintiff de León's claim against HIMA, which  
18 seeks recovery for the emotional distress that she has experienced  
19 as a result of having to witness her husband suffer from surgery-  
20 related complications. Docket Document No. 1. Plaintiffs contend  
21 that the clause is not binding on de León because she did not sign  
22 the medical consent forms. Docket Document No. 25. This argument is  
23 unpersuasive. de León's claim involves the same operative facts as

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1 Rivera's claim and should, therefore, be dismissed and refiled  
2 together with Rivera's claims in the Commonwealth Court of the First  
3 Instance. Cf. Lambert v. Kysar, 983 F.2d 1110, 1121-22 (1st Cir.  
4 1993) ("[C]ontract-related tort claims involving the same operative  
5 facts as a parallel claim for breach of contract should be heard in  
6 the forum selected by the contracting parties.").

7 **IV.**

8 **Conclusion**

9 For the foregoing reasons, we **GRANT** Defendant HIMA's motion to  
10 dismiss, Docket Document No. 17. Plaintiffs' claims against HIMA,  
11 Docket Document No. 1, shall be dismissed without prejudice.  
12 Accordingly, HIMA's motion to set aside the scheduling order, Docket  
13 Document No. 29, is **MOOT**.

14 In addition, and because state courts will have to address  
15 future issues, we **abstain** from deciding Plaintiffs' request for an  
16 extension of time to amend their pleadings, Docket Document No. 32,  
17 and their motion for leave to file their Second Amended Complaint,  
18 Docket Document No. 39. We also find that Plaintiffs' previous  
19 motion for leave to file their First Amended Complaint is **MOOT**,  
20 Docket Document No. 31.

21 Finally, we note that HIMA's arguments regarding the  
22 enforceability of the forum-selection clause at issue may equally  
23 apply to all remaining defendants, including recently-added

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2 defendants listed in the Second Amended Complaint. Thus, Plaintiffs  
3 have **until August 27, 2007** to show cause why their claims against  
4 remaining defendants should not be dismissed as well. Defendants  
will have **until September 11, 2007** to respond.

5 **IT IS SO ORDERED.**

6 San Juan, Puerto Rico, this 15<sup>th</sup> day of August, 2007.

7 S/José Antonio Fusté  
8 JOSE ANTONIO FUSTE  
9 Chief U.S. District Judge